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92-1406

Supreme Court, U.S.
FILED
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1992

GEORGE L. NETTE,

Petitioner

vs.

EASTERN SHEETMETAL, INC.,

Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Can a man who has truly and sincerely held religious beliefs against taking an oath or affirmation pursuant to Matthew 5:33-37 and James 5:12 be denied due process of law if in the alternative to oath or affirm, as mandated by state statute; he is willing to bind himself under penalty of purjury pursuant to Gordon vs. Idaho?

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No._____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

OCTOBER TERM, 1992

George L. Nette, Petitioner

vs.

Eastern Sheetmetal, inc., Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF TENNESSEE
AT KNOXVILLE

Petitioner, George L. Nette, respectfully prays that a writ of certiorari issue to review the judgement and opinions of the Trial Justice Court for Anderson County, the Circuit Court for Anderson County, the Court Of Appeals At Knoxville, and the Supreme Court Of Tennessee At Knoxville who refuse to recognize First Amendment Rights to the free practice of truly and sincerely held religious beliefs concerning

oaths in total opposition of the precedent set by the Ninth Circuit Court of Appeals in the case of Gordon vs. Idaho (778 F.2d 1397 (1985)), and 28 U.S.C. Section 1746. Also because Tennessee statute T.C.A. 1-3-105(14) when laid side by side with the First Amendment fails the test of compliance, 28 U.S.C. Section 2403(b) may be applicable.

ORDERS AND/OR JUDGEMENTS BELOW

The unpublished January 30, 1990 ORDER of the Trial Justice Court for Anderson County appears in Appendix A to this Petition. The unpublished January 30, 1990 Judgement of the Trial Justice Court for Anderson County appears in Appendix B to this Petition. The unpublished August 17, 1990 ORDER of the Circuit Court for Anderson County appears in Appendix C to this Petition. The unpublished September 14, 1990 ORDER of the Circuit Court for Anderson County appears in Appendix D to this Petition. The unpublished October 18, 1990 Judgement of the

Circuit Court for Anderson County appears in Appendix E to this Petition. The unpublished January 15, 1991 Judgement Execution of the Circuit Court for Anderson County appears in Appendix F to this Petition. The unpublished April 14, 1992 ORDER of the Court Of Appeals Of Tennessee appears in Appendix G to this Petition. The May 22, 1992 ORDER of the Court Of Appeals Of Tennessee appears in Appendix H to this Petition. The unpublished August 24, 1992 ORDER of the Supreme Court Of Tennessee appears in Appendix I to this Petition.

JURISDICTION

The State Of Tennessee Supreme Court ORDER in this matter was filed on August 24, 1992. This Court's jurisdiction in invoked under Title 28 U.S.C. Section 1257(12)(13).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I to the United States Constitution is set forth in Appendix J.

Public Law 94-550 90 STAT. 2534, codified at 28 U.S.C. Section 1746.

Public Law 97-280 96 STAT. 1211.

T.C.A. 1-3-105(14) Oath includes affirmation.

Sixteen American Jurisprudence Second Edition Section 177 is set forth in Appendix K.

STATEMENT OF THE CASE

The Trial Justice Court for Anderson County, Tennessee claims to have diversity jurisdiction. Petitioner disagrees with this assertion but is reserving the issue for action at another time. The threshold issue before this honorable Court concerns swearing or affirming oaths.

On October 6, 1989 a civil warrant was issued against Petitioner, by an Ohio corporation, charging him with a sworn account in the amount of $3,870.95. Petitioner has never entered a plea nor has a plea ever been entered by any court. On December 15, 1989 Petitioner entered a motion to dismiss due to complete diversity. On December 19, 1989 the hearing on Petitioner's

motion to dismiss due to complete diversity was held in the Trial Justice Court for Anderson County, Tennessee and was denied by ORDER. It was further ordered, at that time, that the Petitioner had until January 16, 1990 to file with the court his sworn denial and counter-claim with a copy of said sworn denial and counter-claim to be sent to Respondent's attorney. This ORDER was enter on January 30, 1990 nunc pro tunc. (SEE APPENDIX A)

On January 30. 1990 Petitioner again appeared in the Trial Justice Court, at a schedualed hearing, and was attempting to further argue diversity jurisdiction when Petitioner was ordered by the Court to swear or affirm an oath. Petitioner informed the Court that because of his truly and sincerely held religious beliefs he could not swear or affirm an oath, but that he could file an asseveration and state facts, so the Court entered a final Judgement in the amount of $5,678.05 against Petitioner without ever hearing the merits of the case. (SEE APPENDIX

B)

On February 7, 1990 Petitioner filed a Notice of Appeal to the Circuit Court for Anderson County, Tennessee.

On April 19, 1990 Petitioner received from Respondent's attorney, PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS requiring an answer under oath in accordance with Rule 33 and 34 of the Tennessee Rules of Civil Procedure. On May 29, 1990 Petitioner responded to Respondents request with a RESPONSE AND OBJECTION TO APPELLEE"S REQUEST FOR ADMISSION and a MOTION FOR THE COURT TO RECOGNIZE AND RULE ON APPELLANT'S ISSUES PRESENTED FOR REVIEW ON APPEAL with a BRIEF AND DEMAND IN SUPPORT OF MOTION FOR THE COURT TO RECOGNIZE AND RULE ON APPELLANT'S ISSUES PRESENTED FOR REVIEW ON APPEAL in which Petitioner identified his truly and sincerely held religious beliefs, the constitutional and federal basis relied upon for Petitioner's legal position.

On August 16, 1990 a NOTICE of a Summary

Judgement hearing before the Anderson County Circuit Court on August 17, 1990 at 9:00 a.m. was received by Petitioner's wife via U.S. mail. Because Petitioner was out of State and could not possibly appear with less than 24 hours notice, Petitioner's wife appeared and was told by the judge of the Anderson County Circuit Court that in his opinion he felt that Mr. Nette was using the oath issue to get out of paying his debt and that he (Petitioner) would drag this oath issue out forever if they (the Judge and Respondent's attorney) let him and then asked Respondent's attorney if it was OK by him to which he replied yes and the Judge set a trial date of September 14, 1990. (SEE APPENDIX C)

On September 14, 1990 Petitioner appeared in the Circuit Court for Anderson County and was told by the Court that the oath part is very much a part of their system or to affirm. The Court further stated that the Petitioner had been there several times which is a lie as Petitioner had only appeared once on July 9,

1990 at which time Respondent's attorney failed to appear. The Court then coached Respondent's attorney concerning form rather than substance and instructed Petitioner that he could stand by any right he felt he had to. Respondent's attorney complained that there had been no answer, no sworn denial, no response or request submitted, that all the facts under the Rule are taken as admitted, that they had never come up there on appeal, that there's never been any testimony by Mr. Nette and he's (Petitioner) worried about form rather than substance. Petitioner advised the Court that he had filed an answer that no one wanted to recognize, that he had appealed into that Court the federal rights violation, that on July 9, 1990 this same Judge stated to Petitioner "I don't care about your religion", that on August 17, 1990 this same Judge had told Petitioner's wife that "he thought the oath issue was just a ploy by Mr. Nette to get out of paying his debt". Petitioner told that Judge that he thought that was a very biased attitude, and

that he, the Judge, needed to be recused from the case and that Petitioner was going to remove the case to federal court for the federal rights violation and complete diversity. The Judge told Petitioner "Well you do just like I say you do". This Judge further stated that he felt that Petitioner was trying to avoid what he considered to be a process that they had built into the system, not just him and not just the Judge below but over hundreds of years that they had observed. The Judge then told Respondent's attorney "Now I'm going to let you draw an ORDER. You enter yourself a judgement." and turned to Petitioner and said "and you do what you like". SEE APPENDIX D)

On October 18, 1990 the Circuit Court signed a JUDGEMENT ORDER drawn up by Respondent's attorney. This Court will take judicial notice of the fact that no mention is made that the real reason for Judgement was because Petitioner refused to swear or affirm an oath. (SEE APPENDIX E)

On November 14, 1990 Petitioner timely filed a Formal Notice of Appeal.

On January 15, 1990 an execution for garnishment or levy was issued to the Anderson County Sheriffs department for enforcement and then again on May 12, 1992 another execution for garnishment or levy was issued. (SEE APPENDIX F)

On March 13, 1991 the Anderson County Court Clerk filed with the Court Of Appeals at Knoxville, Tennessee, the Transcript of Record. Upon close examination of this filed Transcript of Record Petitioner noticed that certain pages of filed documents were missing from the Record plus Petitioner had finally received documents from the Secretary Of State Of Tennessee at Nashville which proved that the Respondent lacked standing to sue in the Tennessee State Courts and proves beyond a shadow of a doubt that the State Of Tennessee lacked jurisdiction to proceed against Petitioner in the first instance. So on April 9, 1991 Petitioner filed a Rule 24(e)

Motion To Supplement The Record in order to let the Record show what had truly transpired.

On September 23, 1991 the Court Of Appeals dismissed the Petitioner's Appeal for failure to file briefs without addressing the April 9, 1991 Rule 24(e) Motion. Petitioner called the Court Of Appeals Clerk and was informed by him that Petitioner's April 9, 1991 Rule 24(e) Motion had mysteriously disappeared so Petitioner refiled with that Clerk a copy of that Motion.

On September 30, 1991 Petitioner filed a T.R.A.P. RULE 39 PETITION FOR REHEARING.

On October 30, 1991 the Court Of Appeals reinstated Petitioner's appeal indicating that the April 9, 1991 Motion was either not a part of the file, or was overlooked and further ORDERED that Petitioner had 20 days from that ORDER to state specifically in what manner he wished the record corrected and supplemented, AFTER WHICH THE COURT WILL ACT UPON HIS MOTION. (emphasis Petitioner's)

On November 18, 1991 Petitioner filed with

the Court Of Appeals a MOTION FOR SPECIFIC CORRECTIONS AND SUPPLEMENTATIONS OF THE RECORD PURSUANT TO RULE 24(e) T.R.A.P..

On November 21, 1991 the Court Of Appeals Of Tennessee issued an ORDER requesting Petitioner to file with their Clerk copies of all of the documents mentioned in his Motion filed on November 18, 1991 and copies of any other documents he wants to become a part of the appellate record.

On November 22, 1991 Petitioner filed all of the mentioned documents with the Clerk of the Court Of Appeals Of Tennessee, attached to a copy of the Court's November 21, 1991 ORDER.

Petitioner waited and waited for the ruling on his April 9, 1991 Motion as the Court Of Appeals had stated in their October 30, 1991 ORDER. But instead of a ruling on Petitioner's Motion as promised, Petitioner received on April 14, 1992 an ORDER from the Court Of Appeals Of Tennessee stating that the Record was supplemented on November 22, 1991 and because no further action

was taken the appeal was dismissed for failure to file briefs as required by T.R.A.P.. (SEE APPENDIX G) This Court will take judicial notice of the Record that there has never been a judicial ruling on Petitioner's April 9, 1991 Rule 24(e) Motion to Correct the Record in order that Petitioner could file his briefs.

On May 5, 1991 Petitioner filed in the Court Of Appeals Of Tennessee a T.R.A.P. RULE 39 PETITION FOR REHEARING.

On May 22, 1992 the Court Of Appeals Of Tennessee issued an ORDER stating that the petition for rehearing "is should be denied.". (SEE APPENDIX H)

On June 1, 1992 Petitioner timely filed a FORMAL NOTICE OF APPEAL TO THE SUPREME COURT OF TENNESSEE.

On June 30, 1992 Petitioner timely filed his brief with the Supreme Court Of Tennessee At Knoxville.

On August 24, 1992 the Supreme Court Of Tennessee At Knoxvill issued an ORDER of denial

on Petitioner's appeal. (SEE APPENDIX I)

It might be well for this Court to judicially notice that in all of Petitioner's writings to the Appellate and Supreme Courts Of Tennessee, Petitioner has reserved oral arguement, yet he has never been given notice of any of the hearing dates. Is it possible that Respondent's attorney was present at those hearings, and that the hearings have been one sided? Is it possible that because the Petitioner is a bilegerant claimant in person, and has rocked their corporate boat, and interfered with their daily business as usual of herding people through their court-rooms like sheep or cattle, for the sake of control and expediting for dollars, he was not notified?

Petitioner submits to this Court that there is crystal clear evidence in the record that a conspiracy to deprive Petitioner of protected rights and due process of law, is and has been ongoing in the Courts Of Tennessee by licensed bar members. Even now, at the time of this

writing, Petitioner is being bombarded with bills from the Trial Justice Court Of Tennessee, the Circuit Court in Anderson County, Tennessee, the Appellate Court Of Tennessee At Knoxville, and the Supreme Court Of Tennessee At Knoxville, totaling $1,002.65 not to include the threat of penalties and interest and the threat that they will send armed agents against Petitioner to collect judgement and court costs if not paid within a certain time frame, in total disregard of the federally protected rights of Petitioner. (28 U.S.C. Section 1257(13))

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for four reasons:

This Petition presents an issue resolved by implication by this Court but not specifically and unequivocally decided by this Court; and the Opinion below conflicts with Constitutional and Congressional mandates; and the Opinion below conflicts with the previous decision of another

Circuit; and Petitioner is in immediate danger of sustaining injury as a result of statute's enforcement. (28 U.S.C. Section 1257(13))

This Court has implicitly held that unsworn declarations are acceptable in lieu of an oath or affirmation in it's own Rules Of Court adopted December 5,1989, effective January 1, 1990, Rule 29.2 in part:

> ....be deposited in the institutions internal mail system on or before the last day for filing and be accompanied by a notarized statement or declaration in compliance with 28 U.S.C. Section 1746 setting forth the date of deposit and stating that first class postage has been paid....the Clerk shall require the person who mailed the document to submit a notarized statement or declaration in compliance with 28 U.S.C. Section 1746 setting forth the details of the mailing and stating that the mailing took place on a particular date....

Then again in Rule 29.5(c):

> By a notarized affidavit or declaration in compliance with 28 U.S.C. Section 1746, reciting the facts and circumstances of service in accordance with the appropriate paragraph or paragraphs of this Rule, whenever service is made by any person not a member of the Bar of this Court.

And yet again in Rule 39.1 in part:

> ....Together with the party's notarized affidavit or declaration (in compliance with 28 U.S.C. Section 1746) in the form prescribed by the Federal Rules of Appellate Procedure,....

It is quite clear to Petitioner that this Court has means other than oath or affirmation when testimony is required to establish a thing, be it verbal or in writing. Yet in Tennessee there are only two provisions which are found at T.C.A. 1-3-105(14) "Oath" includes affirmation; and is strictly enforced by the Courts of Tennessee as is evidenced in the January 30, 1990 nunc pro tunc ORDER (SEE APPENDIX A) where Petitioner is given a set time to file with that Court his sworn denial and counter-claim with a copy of said sworn denial and counter-claim to be sent to Respondent's attorney. And in the transcript of the January 30, 1990 hearing in the Trial Justice Court For Anderson County, At Clinton, Tennessee it is evidenced that even though Petitioner was willing to give testimony, the fact that Petitioner would not swear or affirm was the soul foundation for the judgement of

the Court. (SEE APPENDIX B) And in the Circuit Court for Anderson County, At Clinton, Tennessee Petitioner identified his truly and sincerely held religious beliefs and the law, both common and civil, on which he based his position, but that Court showing its bigoted and biased position said;

> ....I don't care whether you're a practicing hebrew, I don't care what your religion is.
> ....I don't care about your religious convictions here.
> ....I don't want to hear about your religious convictions because that's not material to me. (TRANSCRIPT OF JULY 9, 1990 pages 4 and 5)

> ....as a judge I'm supposed to have people sworn in as witnesess under our system. The oath part is very much a part of our system or to affirm. ....if you're not going to swear, uh, not going to affirm and not going to testify in this case, I know what I'm going to do. ....We need to go on with this case and you can appeal what I do here, stand by any right you feel that you have to, but we need to get this matter resolved now.....I don't know whether your sincere or not but individuals that owe debts usually don't stand behind a religious conviction and say that I can't take an oath.... (SEE APPENDIX D)

It is beyond the understanding of Petitioner

as to how that Court arrived at a conclusion of law that the Petitioner was one that owed a debt when the merits of the case have never been addressed. Is it possible that these brother bar members (the judge and the attorney for Responsent) met on the golf course or had a midnight rendezvous and one sidedly discussed the merits? At any rate, getting back on point, Petitioner finds Tennessee Statute 1-3-105 and the position and attitudes of the Tennessee State Courts to be obnoxious, vile and repugnant to his truly and sincerely held religious beliefs. And those beliefs are identified at:

> Matthew 5:
> 33) Again, ye have heard that it hath been said by them of old time, Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths:
> 34) But I say unto you, Swear not at all; neither by heaven; for it is God's throne;
> 35) Nor by the earth; for it is his footstool: neither by Jerusalem; for it is the city of the great King.
> 36) Neither shalt thou swear by thy head, because thou canst not make one hair white or black.
> 37) but let your communications be, Yea, yea; Nay, nay: for whatsoever is more than these cometh of evil.

(Matthew 5:33-37 KJV)

> James 5:
> 12) But above all things, my brethren, swear not, neither by heaven, neither by the earth, neither by any other oath: but let your yea be yea; and your nay, nay; lest ye fall into condemnation. (JAMES 5:12 KJV)

And this term "affirm" being an alternative for those who are atheists and who want no part of God is not an alternative that can even be considered by a believer. To a believer, there is nothing, no part of his life or existence that excludes God. In the mind of the Petitioner therefore, the term "affirm" is merely a euphemism for the term "oath".

Congress, in its wisdom recognized the need not to abrogate an individuals First Amendment Rights by passing Public Law 94-550, 90 Statute 2534, and made unsworn declarations, statements, verifications, and certificates with like force as sworn declarations, statements, verifications, and certificates, and codified it at 28 U.S.C. Section 1746:

Sect. 1746. Unsworn Declarations under

penalty of perjury

Whenever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(Added Oct. 18, 1976, P.L. 94-550, Sect. 1(a), 90 STAT. 2534.)

The above Statute includes grand juries and courts as is shown at page 5646, Section

6 of the Legislative History of the above mentioned Public Law.:

> Section 6 of the bill amends a specific perjury statute in the same manner that section 2 amends the general perjury statute. The specific perjury statute involved is section 1623(a) of title 18, United States Code, which relates to false declarations before a grand jury or court.

Then on October 4, 1982 in Public Law 97-280, 96 Statute 1211, Congress expounded the wisdom and value for individuals to apply the teachings of the scriptures to their lives and of the national need to study and apply the teachings of the Holy Scriptures when it stated in part:

> Whereas the history of our Nation clearly illustrates the value of voluntarily applying the teachings of the Scriptures in the lives of individuals, families, and societies;...
>
> ....in recognition of both the formative influence the Bible has been for our Nation, and our national need to study and apply the teachings of the Holy Scriptures.

Petitioner deems this to be wise, sound and vital legal advise and in an effort to effect a sincere amendment of his life, does indeed study and apply the teachings of the Holy

Scriptures as a daily guide governing his actions, and in fact incorporates Scriptural doctrines and precepts into every aspect of his life.

Congress proposed and the Legislatures ratified, pursuant to the fifth Article of the original Constitution, the BILL OF RIGHTS, effective December 15, 1791. They exhibited a sincere legal desire to prevent misconstruction or abuse when they stated:

PREAMBLE

> The convention of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best insure the beneficient ends of its institution.

ARTICLE I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Congress was very clear, precise and

unambiguous in its statement in the first article pertaining to no law prohibiting the free exercise of religion and the 9th Circuit Court, in GORDON v IDAHO, supra, upheld all of the above precepts pertaining to written testimony as applied to oral testimony in an Idaho case where a man, because of his truly and sincerely held religious beliefs, refused to swear an oath in order to be deposed. The Court stated:

> "The First Amendment's guarantee of the free exercise of religion requires that our procedural rules be interpreted flexibly to protect sincerely held religious beliefs and practices." (GORDON court at page 1400 citing CALLAHAN, supra. at 1273.)
>
> In Callahan v. Woods, 736 F.2d 1269, 1273 (9th Cir.1984), we set forth factors that courts must consider in determining whether a neutrally based statute violates the First Amendment guarantee of the free exercise of religion. We stated that the "government must shoulder a heavy burden to defend a regulation affecting religious actions." Id. at 1272. And we emphasized that it is "the least restrictive means' inquiry which is the critical aspect of the free exercise analysis." Id. The specific verbal formula offered by the district court was not the least restrictive means of assuring that Gordon testify truthfully at his

deposition.

This Court should take judicial notice of the fact that at no time during any of the proceedings has the Petitioner refused to testify or give a statement, in fact, Petitioner in his May 29, 1990 Brief to the Circuit Court Of Tennessee sitting in Anderson County, clearly stated that he was willing to state the following in order to satisfy the requirements of T.C.A. 1-3-105, Oaths and Affirmations:

> "I will, to the best of my knowledge and belief, state the facts accurately, correctly, and completely. I testify with an awakened conscience and with a mind impressed with my duty to God, the one and only Lawgiver (James 4:12 and Isaiah 33:22) not to violate his 9th Commandment to us which prohibits us from bearing false witness. Additionally, pursuant to Proverbs 19:9, I believe and understand that those who disobey will be punished and will perish.
>
> I freely give my testimony with full understanding and knowledge that to intentionally bear false witness carries with it the charges and punishment of perjury."

Now Respondent's attorney being a member of the bar of the State Of Tennessee just might

try to pursuade this Court that Petitioner's statement above does not meet the criteria set down in 28 U.S.C. Section 1746. Although it would appear so, more recently the 9th Circuit Court, in GORDON v IDAHO, supra, upheld Petitioner's position when it said:

> "We therefore conclude that any statement indicating that the deponent is impressed with the duty to tell the truth and understands that he or she can be prosecuted for perjury for failure to do so satisfies the requirement for an oath or affirmation under Fed. R. Civ. P. 30(c) and 43(d). Deponents, furthermore, need not raise their hand when they state the words necessary to satisfy Fed R. Civ. P. 30(c) and 43(d) if to do so impinges on sincerely held religious beliefs by using the least restrictive means to further compelling state interests that impinge on such free exercise. (GORDON court citing(pg. 1400-1401) CALLAHAN v WOODS, 736 F.2d 1269 at 1273.)

The State therefore, is obligated to protect the individual's free exercise of his truly and sincerely held religious beliefs and is required to use the least restrictive means available to it when dealing with such fundamental and inalienable rights of conscience. In a Fourth

Amendment case the Court said:

> "Where rights secured by the Constitution are involved there can be no rule making or legislation that would abrogate them." (MIRANDA v ARIZONA, 384 US 436, at 491)

So it would appear that any law or statute of Tennessee, such as T.C.A. 1-3-105(14), though having the color and guise of law, if it is not in complete compliance with the Constitution of the United States, is in fact an unconstitutional law or statute as stated in 16 Am Jur 2d Ed, Section 177:

> The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is strictly stated as follows:
>
> > The general rule is that an unconstitutional statute, though having the form and the name of law, is in reality no law, but wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in

> legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted.
>
> Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it . . .
>
> A void act cannot be legally consistant with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.
>
> No one is bound to obey an unconstitutional law and no courts are bound to enforce it. (16 Am Jur 2d Ed, Section 177)

Therefore in the Trial Justice Court for Anderson County, Tennessee when Petitioner was ordered to swear or affirm, without any other provisions, the State, of its own volition created estoppel, and any acts performed beyond judicial adjudication of the oath issue are void for all intents and purposes.

Although the provisions for unsworn declarations has been in place since 1791, then

identified and codefied in 1976, and reviewed and clarified in 1985, Tennessee continues to refuse to recognize and/or apply those constitutional precepts and because of the August 24, 1992 ORDER of denial from the Supreme Court Of Tennessee At Knoxville, Petitioner is in immediate danger of sustaining a direct injury as a result of the enforcement of T.C.A. 1-3-105(14) "Oaths" or "Affirmation". (Cramp v. Board of Public Instruction of Orange County, Fla., Fla. 1961, 82 S. Ct. 275, 368 U.S. 278, 7 L.Ed.2d 285, on remand 137 So.2d 828.

This is an issue so important that it needs to be settled once and for all so as not to waste this Court's precious time in the future and a message needs to go out to Tennessee and all other States that do not have provisions for unsworn declarations in their statutes. 28 U.S.C. Section 2403(b) may be applicable.

Should men be ruled by God's law or should they be ruled by a dictator like state, such as Tennessee?

Are men property of the state to be tortured and punished at their wim? Or are they free souls under God?

In the words of my Lord and Savior:

> No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and mammon. (MATTHEW 6:24 KJV)

> No servant can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other. Ye cannot serve God and mammon. (ST. LUKE 16:13 KJV)

This Court should grant certiorari here to explicitly rule that Tennessee's statute, T.C.A. 1-3-105(14), is unconstitutional and needs to be changed or revised to comply with the mandates of the Constitution and 28 U.S.C. Section 1746 and, further, to resolve the conflict between the State and Federal Statutes and decisions of the Circuit Courts.

CONCLUSION

For the reasons set forth above, a writ

of certeorari should issue to review the judgement and opinions of the Supreme and lower Courts of Tennessee in this matter.[2/]

Dated: November 18, 1992.

Respectfully submitted,

GEORGE L. NETTE
Petitioner-sui juris-Pro se

2/If this Court elects not to address the issues presented in this writ at this time, it is requested that the writ issue and that the matter be remanded to the Supreme Court Of Tennessee for redetermination in light of 28 U.S.C. Section 1746 and the 9th Circuit Court's opinions in Gordon, supra, and Calahan, supra.

IN THE TRIAL JUSTICE COURT FOR ANDERSON COUNTY, TENNESSEE

Eastern sheet Metal, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	C.A. #89CV001554
	)	
George L. Nette, d/b/a Casework Installation, Ltd.,	)	
	)	
Defendant.	)	
	)	

ORDER

This matter came before the Court for hearing on December 19, 1989 upon the Motion of Defendant to dismiss Plaintiff's complaint on grounds that the Court lacks jurisdiction of the Defendant and argument of counsel for the Plaintiff, the Court is of the opinion that the motion is not well-taken and Defendant's motion is accordingly denied.

The Court further finds that this matter shall be set for hearing on January 30, 1990 at 9:30 a.m. and that the Defendant shall have until January 16, 1990 to file with the Court his sworn denial and counter-claim. A copy of said sworn denial and counter-claim shall be sent to Plaintiff's attorney, Ron Cunningham, at P.O. Box 1, Knoxville, Tenn. 37901.

Enter this 30 day of Jan, 1990. Nunc pro tunc.

Jennings B. Meridith
Trial Justice Judge

Approved for Entry:
Ron cunningham
Ron Cunningham
Attorney for Eastern Sheet Metal, Inc.
P.O. Box 1
Knoxville, Tenn. 37901

APPENDIX A

State of Tennessee, County of Anderson

To any lawful officer to execute and return: Summon George Nette d/b/a/ Caswork Installation, Route 1, Box 341, Ridge Circle, Andersonville, TN 37705 to appear before the Judge of the Trial Justice Court of Anderson County, to be held in the courtroom in Clinton on the 24 day of oct, 1989, at 9:30 A.M., to answer in a civil action brought by Eastern Sheet Metal Inc. for a sworn account in the sum of $5,678.05 FIVE THOUSAND SIX HUNDRED SEVENTY-EIGHT DOLLARS AND FIVE CENTS. Together with all legal interest applicable Attorney Fees plus the cost of this cause. under $10,000.
this 6 day of oct, 1989.

Helen C. Jernigan
Clerk of the Trial Justice Court

By Dawn S. Bean , D.C.

JUDGEMENT

Judgement for the plf against the Def for $5678.05 and costs of suit, for which execution may issue.
This the 30 day of Jan, 1990.

Jennings 3. Meridith
Judge, Trial Justice Court

APPENDIX A

PARTS OF VERBATIM TRANSCRIPT OF EVIDENCE OF JANUARY 30, 1990

Page 4 starting at the end of line 3:

I feel necessary to give Mr. Nette an opportunity, a further opportunity to submit a sworn denial if he wishes to. Now, I believe you indicated at a previous hearing that you didn't desire to, that you didn't plan on submitting a

MR. NETTE: I need to get the jurisdictional issue adjudicated.

THE COURT: The jurisdictional issue has been resolved. Do you intend to file a sworn denial or not?

MR. NETTE: Your Honor, I can't because of my truly and sincerely held religious beliefs...uh,

THE COURT: The Court then... well, you can affirm.

MR. NETTE: I can report facts to the Court,

THE COURT: You can swear or affirm.

MR. NETTE: I can make an asseveration to the Court, but I can't swear an oath.

THE COURT: Well, do you wish to affirm? Do you wish to file an affirmation, then, in lieu of an

APPENDIX B

oath, since you don't oath?

MR. NETTE: I'd file an asseveration with the Court in lieu of an oath.

THE COURT: I'm not sure I understand what you're saying.

MR. NETTE An affirmation is the same as an affidavit which is the same as swearing an oath. They're synonomous with each other, whereby an asseveration is stating the facts,

THE COURT: I'll enter judgement for the plaintiff in the amount of,

ATTORNEY CUNNINGHAM: $5,678.05, Your Honor.

THE COURT: $5,678.05. That means you may appeal this to the Circuit Court and have it heard all over again from the very beginning as long as you do so within 10 days excluding Sunday.

ATTORNEY CUNNINGHAM: Thank you Your Honor.

MR. NETTE: Thank you, Your Honor, it will be done.

PETITIONER HAS THE TAPES OF THIS PROCEEDING AND CAN SUPPLY A COPY TO THIS COURT IF SO REQUESTED.

APPENDIX E

PARTS OF NARRATIVE TRANSCRIP OF EVIDENCE OF

AUGUST 17, 1990

Starting on page 3 line 9:

ATTORNEY CUNNINGHAM: Your Honor, Mr. Nette has not bothered to answer any letters I've sent, in order that I might proceed, due to this oath issue.

THE COURT: Whether Mr. Nette sincerely can or can not take an oath and if his belief is truly and sincerely held,

MRS. NETTE: Oh, but it is truly and sincerely held Your Honor.

THE COURT: I can not say, but in my opinion, I feel, it is just a ploy by Mr Nette to get out of paying his debt. Will you tell him that?

MRS. NETTE: I will tell him.

THE COURT: He will drag this oath issue out forever if we let him. So I'm going to set a trial date. Is that OK by you Mr. Cunningham?

ATTORNEY CUNNINGHAM: Yes but I need to compell Mr. Nette to answer the questions so my client will not have to appear in court.

APPENDIX C

PARTS OF VERBATIM TRANSCRIPT OF EVIDENCE OF

SEPTEMBER 14, 1990

Starting on page 2 line 23:

THE COURT: Let, let, let me tell you something, as a judge I'm supposed to have people sworn in as witnesess under our system. The oath part is very much a part of our system or to affirm. Now I don't know whether you owe any debt or not but you've been here several times and I've gotten to the point where, if you're not going to swear, uh, not going to affirm and not going to testify in this case, I know what I'm going to do. I don't mind, uh, uh stirring this thing around but it's not right for people to continue to have to appear if this is a matter of, of form rather than substance. We need to go on with this case and you can appeal what I do here, stand by any right you feel that you have to, but we need to get this matter resolved now. Are you here this morning for the purpose of hearing proof?

ATTORNEY CUNNINGHAM: Your Honor, we was here I guess a month ago on a motion, the Court said at

APPENDIX D

that time they would set this case for trial today. But the problem we have here is that there's been no answer, there's been no sworn denial, there's been no response to our request submitted, and all the facts under the rule are taken as admitted. Now I don't know, uh, we've never, we came up here on appeal. There's never been any testimony of Mr. Nette. He's worried about form rather than substance.

THE COURT: Well we,

ATTORNEY CUNNINGHAM: I, I've got a witness here from Cincinnati, I don't want another continuance, we need to,

THE COURT: I, I'm not going to, I'm not going to grant a continuance. Now, Mr, Nette, uh, you can say, uh, I know you've got the record here and you say to me what you feel that you want to say about this matter, and uh, I don't mind at all, whatever you, you have to say here, you don't have to say anything if you don't like, but these people have the right to go ahead and proceed, you haven't filed an answer and you haven't done anything that we require in our law which means that I normally enter a judgement, now what do you have to say about

that.

MR. NETTE: Well Judge, I filed an answer and no one wants to recognize the answer that I filed. I appealed into this Court the issue of the Federal Rights violation, depriving me of my Right to Freedom of Religion. You yourself, sitting on the bench here, on July the 9th told me that you didn't care about my religion and then you retracted it and said you respected my religion. On August the 17th you told my wife, Quote, "Whether Mr. Nette sincerely can or can not take an oath and if his belief is truly and sincerely held," my wife interrupted you, "Oh, but it is truly and sincerely held Your Honor." Judge Scott again, "I can not say, but in my opinion, I feel it is just a ploy by Mr. Nette to get out of paying his debt." Will you tell him that?" Well she did, and I think that's a very biased attitude, and I think you need to be recused from this case and I'm removing this case to federal court,

THE COURT: Well you do just like I say, you do,

MR. NETTE: for the federal rights violation

and for the complete diversity involved in this case. Uh, I didn't appeal the merits of the case into here. This guy comes in here wanting to address merits. I came in here on a federal rights violation.

THE COURT: Well sir, uh, the difference is Mr. Nette, that you try to run our system from the time below. you come in as you have with an extremly hostile attitude misinterpreting what people say. I can't read your mind and that's basicly what I was telling your wife, I don't know whether your sincere or not but individuals that owe debts usually don't stand behind a religious conviction and say that I can't take an oath, they'll come up here and, and testify to any defenses that he has, now religiously you do what you feel that you have to do but I'm not passing judgement on you at all.

MR. NETTE: Sounds like you did already Judge.

THE COURT: That's between you and God, but basically I'm passing judgement on the facts as I know them to be. If we can't get you here without

you spouting some religious defense or some federal uh, violation, that we are violating, I'm not violating anything, I'm being as candid with you as I can. I feel like your trying to avoid what I consider to be a process that we've built into the system. Not just me and not just the Judge below but over hundreds of years that we've observed and if you fail to observe those processess then you need to call upon a higher calling than, than I can muster because I don't think that what you're saying to me is a defense in this case regardless and you can remove it to federal court or you can do what you feel is necessary in our State Court system. Now I'm going to let you draw an ORDER. You enter yourself a judgement. And you do what like.

PETITIONER HAS THE TAPES OF THIS PROCEEDING AND CAN SUPPLY A COPY TO THIS COURT IF SO REQUESTED.

APPENDIX D

IN THE CIRCUIT COURT OF TENNESSEE
SITTING IN ANDERSON COUNTY

EEASTERN SHEET METAL, INC.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.: 90LA000037
	)	
GEORGE L. NETTE	)	
d/b/a Casework Installation,	)	
Limited	)	
	)	
Defendant.	)	

JUDGEMENT

The above entitled cause came before the Honorable Judge Scott on September 14, 1990 for trial. The court found the following:

1. That the defendant had failed to respond or reply to the Plaintiff's Request for Admissions.

2. That the defendant has failed to repond or reply to the Plaintiff's Interrogatores and Request for Production of Documents.

3. That no answer had been filed to Plaintiff's orignial complaint.

Therefore, after hearing both parties, and for good cause shown the court found that judgement should be rendered for the Plaintiff for $5678.05 with the costs taxed to the defendant for which execution may issue if necessary.

It is ORDERED that Judgement be entered in favor of the Plaintiff with cost to be taxed to the defendant.

Dated this 18 day of Oct., 1990, by the Court.

APPENDIX E

James B. Scott
Judge

APPROVED FOR ENTRY:

Ron Cunningham
Ron Cunningham
FINKELSTEIN, DERN STEINBERG &
CUNNINGHAM
P.O. Box 1
Knoxville, Tennessee 37901
Telephone (615) 525-0238

APPENDIX E

GARNISHMENT OR LEVY

County Anderson

Case No. 90LA00037

EMPLOYER/OTHER

Levy on checking, saving, C.D.

at 1st American Bank

Eastern sheet metal
Plaintiff

vs George L. Nette
Defendant

d/b/a Casework Installation

Date of Judgement	10/18/90
Court Costs	58.50
Clerk's fee	16.50
Levy	10.00
Officer's Commission	289.90
Judgement and Interest	5678.05-152.73
Total Amount Due	6,580.30

Date of Issue 1-15-91

HELEN C. JERNIGAN
CLERK

By dottie Collins
D.C.

APPENDIX F

GARNISHMENT OR LEVY

County Anderson

Case No. 90LA000037

EMPLOYER/OTHER

Levy on funds in checking and/or savings at First American Bank

EASTERN SHEET METAL INC
Plaintiff

vs GEORGE NETTE dba
Defendant

Casework Installation

Date of Judgement	1-30-90
Court Costs	85.00
Clerk's fee	16.50
Levy	2.00
Officer's Commission	126.35
Judgement and Interest	2556.03
Total Amount Due	2785.88

Date of Issue May 12, 1992

HELEN C. JERNIGAN
CLERK

By Dottie Collins
D.C.

APPENDIX F

IN THE COURT OF APPEALS OF TENNESSEE

GEORGE L. NETTE	)	
	)	
Appellant	)	
	)	
vs.	)	CA No.
	)	
EASTERN SHEETMETAL, INC.,	)	
	)	
APPELLEE	)	

O R D E R

The record in this cause having been filed on March 13, 1991 as supplemented November 22, 1991, and no further action having been taken, it is ordered that this appeal be dismissed for failure to timely file briefs as required by T.R.A.P.

Costs are taxed to the appellant.

This _____ day of April, 1992.

Don T. McMurray
Don T. McMurray, J.

signature not ledgable

APPENDIX G

IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SHEETMETAL, INC	)	
	)	
Appellee	)	
	)	
vs.	)	CA No. 03A01-9103-CV-00098
	)	
GEORGE L. NETTE	)	
	)	
Appellant	)	

O R D E R

Appellant's appeal was dismissed by order filed April 14, 1992. Appellant has now filed a petition for rehearing. Upon consideration, the court is of the opinion that the petition is should be denied.

This 22nd day of May, 1992.

Don T. McMurray
Don T. McMurray, J.

S L L M. Goddard

APPENDIX H

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

EASTERN SHEETMETAL, INC.,	)	
	)	
APPELLEE,	)	
	)	
V.	)	ANDERSON CIRCUIT
	)	
GEORGE E. NETTE,	)	C.C.A. No.
	)	03A01-9103-CV-00098
Appellant.	)	

O R D E R

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be denied.

PER CURIAM

APPENDIX 1

AMENDMENT I TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people, peaceably to assemble, and to petition the government for a redress of grievances.

APPENDIX J

16 AMERICAN JURISPRUDENCE 2nd EDITION, SECTION 177

The general misconception is that any statute passed by legislators bearing the appearance of law constitutes the law of the land. The U.S. Constitution is the supreme law of the land, and any statute, to be valid, must be in agreement. It is impossible for both the Constitution and a law violating it to be valid; one must prevail. This is strictly stated as follows:

The general rule is that an unconstitutional statute, though having the form and the name of law, is in reality no law, but wholly void, and ineffective for any purpose; since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it. An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been

APPENDIX K

enacted.

Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creats no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it...

A void act cannot be legally consistant with a valid one. An unconstitutional law cannot operate to supersede any existing valid law. Indeed, insofar as a statute runs counter to the fundamental law of the land, it is superseded thereby.

No one is bound to obey an unconstitutional law and no courts are bound to enforce it.

(16 Am Jur 2nd Ed., Sect 177)

APPENDIX K